IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No. 618/2007

Judgment delivered on: November 01, 2007

Shri Kishan Lal Arora
S/o Sh.Ram Lal Arora
R/o A-35, Mira Bagh
New Delhi ..... Appellant.

Through:

versus Mr. Rakesh Khanna, Advocate

Sh.Mukesh Nigam
S/o Sh. RamChandra Nigam,
R/O EC-268, Maya Enclave,
New Delhi ..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

By way of this appeal, the appellant who is the owner of the offending vehicle seeks to challenge the impugned award whereby the Tribunal has given an award of Rs. 2,60,000/- with interest @ 6% per annum in favour of the respondent/claimant and against the appellant.

In brief the facts of the present appeal are that on 19/12/1994 at about 10 p.m., Shri Mukesh Nigam was riding his scooter, bearing registration No. DIU 5778, while coming from his office at Defence Colony on his way to his house at Maya Enclave. Shri Mukesh Nigam halted his scooter at the red light at Lajwanti Garden Chowk for taking a right turn towards the Maya Puri Road & on the light turning green, he took a right turn & was hit by a Maruti Car bearing registration No.DL-2CF 1592 which was coming from jail road, Tilak Ngar side a t a very high speed and had jumped the red light. The scooter and Shri Mukesh Nigam were dragged for about 30 yards before the car stopped. The claimant respondent was taken on Deen Dayal Upadhyay and after receiving treatment from there he went to

Ganga Ram Hospital and from there he was shifted to Kolmet Hospital. The present respondent filed claim petition before MACT on 27.5.1995 and award was made on 7.7.2007. Aggrieved with the said award the appellant has assailed the said award.

The main grievance raised by the appellant in the present appeal is that the Tribunal has granted excessive amount of compensation of Rs.1 lac towards the permanent disability while at the same time categorically holding that the respondent claimant had not proved any medical report to show that on account of injury, the respondent was not in position to sit for a long hours. In support of his argument, counsel for the appellant has invited my attention to para 15 of the impugned award which shows that the Tribunal has observed that the disability suffered by the respondent injured was not such that he was unable to do the work of Chartered Accountant. The counsel further stated that disability certificate filed by the respondent/injured is of 11th October,

1996, although the respondent had suffered the injuries on account of the accident occurred on 19.12.94. Counsel also suggested that none of the witnesses who had signed the disability certificate appeared in the witness box to prove the permanent disability of the respondent at 20%. Counsel for the appellant invited my attention to the statement of PW-7, Dr. S.K.Sogani, Consultant Neurosurgeon, Indraprastha Apolo Hospital, New Delhi, where he has stated that vide Ex.PW 3/58, in the requisite column of diagnosis the respondent was diagnosed having suffered only head injury and not the spinal injury for which the treatment of respondent continued and disability of the claimant/respondent was taken to the extent of 20%. Counsel further contended that the respondent injured was initially admitted in Deen Dayal Hospital, Delhi, where he was not also diagnosed as a case of spinal injury. Counsel for the appellant has invited my attention to pages 23 & 24 of the paper book, in which no such diagnose of spinal injury was made by the attending doctor. Even in Ganga Ram Hospital, the

final diagnoses found by the Doctor was of head injury as would be evident from the admission/discharge record which was duly exhibited as Ex. PW4/1.

Another contention raised by the counsel for the appellant in the present appeal is that the Tribunal has erred in reaching the conclusion to hold the appellant negligent. The contention of the counsel for the appellant is that no such negligence was proved by the respondent and therefore, finding of the Tribunal is without any basis and proof. In support of his contention, counsel for the appellant has placed reliance on the judgment of the Division Bench of Gujarat High Court in **Pankajbhai Chandubhai Patel Vs. Bharat Transport Corporation & Anr.,** reported in **1998 (1) T.A.C.883 (Guj.)**

I have heard counsel for the appellant at considerable length and have perused the record.

The respondent injured was initially admitted in Deen Dayal Upadhyay Hospital, Delhi and from there he was taken to

Ganga Ram Hospital, Delhi. The respondent injured was not satisfied with the treatment in Ganga Ram Hospital and thereafter he got himself admitted in Kolmet Hospital, where he was advised C.T. Scan as the said hospital suspected spinal injury. He remained at Kolmet Hospital for about one and half month. Report of the C.T. Scan revealed that he has suffered fracture in his spinal cord in D7 and D8 vertibra. It is an admitted case that the respondent injured was not subjected to C.T. Scan or MRI either in Deen Dayal Hospital or in Ganga Ram Hospital and it is only in Kolmet Hospital, the respondent injured was found to be suffering with spinal cord injury. The respondent injured has duly proved the medical records not only by his own deposition but by producing the evidence of Dr. S.K. Sogani, Consultant Neurosurgeon of Apollo Hospital and Dr.Prem Chandra, Consultant Neurosurgeon of Tirath Ram Shah Hospital. The respondent injured has also proved the disability certificate duly certified by five Doctors who constituted the Medical Board. Going by the said medical

records and the evidence led in support thereof it cannot be said that the respondent injured has failed to prove the disability of the nature of injuries suffered by him. I am not inclined to interfere in the findings arrived at by the Tribunal.

As regards the second contention of the counsel for the appellant that the negligence was not proved by the respondent injured, I feel that the said submission of the counsel is also equally devoid of any merit. The Tribunal has found that the Maruti Car being driven by the appellant was coming at very high speed and the appellant had jumped the red light also. The impact was so grave that the scooter of the respondent was dragged for about 30 yards before the car was stopped by the appellant. The Tribunal has also made reference to the criminal records to hold the negligence of the appellant owner of the offending vehicle. The Tribunal has also referred to the judgment of the Metropolitan Magistrate dated 10.5.2000, whereby the appellant was convicted for committing an offence under Section 279/337 IPC.

I do not think in the present case the appellant had established or proved that there was no negligence on the part of the appellant owner of the offending vehicle.

In catena of judgments the Supreme Court has held that reliance can be placed on the criminal records to ascertain the negligence on the part of the driver of the offending vehicle. In the present case not only the case was registered against the appellant driver of the offending vehicle but even the trial stood concluded with the conviction of the appellant for committing offence by the appellant. The judgment referred above is not applicable to the facts and circumstances of the present case.

I do not find any infirmity in the impugned order.

Dismissed.

November 01,2007 **KAILASH GAMBHIR**
mg **(JUDGE)**